



THE ATTORNEY GENERAL
OF TEXAS

GROVER SELLERS

AUSTIN 11, TEXAS

Honorable Sidney Latham
Secretary of State
Austin, Texas

Opinion No. 0-6065
Re: Authority of Securities
Division to issue Real
Estate Salesmen's Licenses
under Article 6573a, V.A.C.S.,
to persons not to be employed
by a licensed Real Estate
Dealer.

Dear Sir:

Your office, through the Honorable Horace B. Sessions, Securities Commissioner, has requested an opinion of this department on the following matter:

"Section 2 of the Act commonly known as the Real Estate Dealers License Act, (Art. 6573a, Vernon's Annotated Civil Statutes of Texas) defines a Real Estate Dealer and a Real Estate Salesman for the purposes of the Act. Section 3 enumerates certain exceptions to these definitions and provides that the Act shall have no application thereto. We wish to know whether the Securities Division is authorized, under the above provisions, to issue Real Estate Salesmen's Licenses to persons who are not to be employed by licensed Real Estate Dealers, but who are to be employed by persons exempted from such licenses under the Act."

We find no Texas decisions bearing upon this question and we must therefore look to the statutes involved for our answer. Relevant portions of Article 6573a are as follows:

"Sec. 2. The following terms shall, unless the context otherwise indicates, have the following meanings:

"(a). (1). The term 'Real Estate Dealer' shall include every person or company, other than a salesman, and licensed and registered attorneys, who for another or others for compensation or other valuable consideration, or who with the intention or in the expectation of upon the promise of receiving or collecting compensation or other valuable consideration, lists for sale, sells, exchanges, buys, or rents, or offers, or attempts, or agrees to collect rent for the use of real estate, or negotiates, or offers, or attempts, or agrees to negotiate a loan, secured or to be secured by mortgage or other incumbrance upon or transfer of real estate; or

auctions, or offers, or attempts, or agrees to auction any real estate; or appraises, or offers, or attempts, or agrees to appraise any real estate; or who advertises, or holds itself, himself, or themselves out as engaged in the business of selling, exchanging, buying renting, or leasing real estate, or assists or directs in the procuring of prospects, or the negotiation or closing of any transaction which does or is calculated to result in the sale, exchange, leasing, or renting of any real estate, or who buys or offers to buy, sells or offers to sell, or otherwise deals in options on real estate or in the improvements thereon.

"(2). The term 'Real Estate Dealer' shall also include any person or company employed by or on behalf of the owner or owners of lots or other parcels of real estate at a stated salary, or upon a commission, or upon a salary and commission basis, or otherwise, to sell such real estate in any parts thereof, in lots or other parcels, and who shall sell or exchange, or offers, or attempts, or agrees to negotiate the sale or exchange of any such lot or parcel of real estate; provided, however, if the owner of lots or other parcels is engaged in the business of buying, selling, exchanging, leasing, renting of property and holding himself out as a full or part-time dealer in real estate, then such person employed by said owner may be licensed as a salesman of said owner if said owner has been licensed as a dealer in real estate.

"(3). The term 'Real Estate Dealer' shall also include any person or company engaged in the business of buying, selling, exchanging, leasing, renting of property on his or its own account and holding himself or itself out as a full or part-time dealer in real estate.

"(b). The term 'Real Estate Salesman' shall mean and include any person or company employed or engaged by or in behalf of a licensed real estate dealer to do or deal in any act, acts, or transactions set out and comprehended by the definition of a 'Real Estate Dealer' in Section 2, Subsection (a) of this Act.

"(c) If the sense requires it, words in the present tense include the future tense; in the masculine gender, include the feminine or neuter gender; in the singular number, include the plural number; in plural number, include the singular number; 'and' may be read 'or'; and 'or' may be read 'and'.

"Sec. 3. The provisions of this Act shall not apply to, and the terms 'Real Estate Dealer' and 'Real Estate Salesmen,' as above defined, shall not include:

"(a). Any person or company who, as owner or lessor, shall perform any of the acts set out in Section 2, Subdivision (a) with reference to property owned or leased by them, or to the regular employees thereof with reference to the property owned or leased by such person or company where such acts are performed in the regular course of, or as incident to, the management of such property and the investment therein, unless such person or company is engaged in the business of buying, selling, exchanging, leasing, or renting of property and holding himself or itself out as a full or part-time dealer in real estate.

"(b). Persons acting as an attorney in fact under a duly executed power of attorney from the owner authorizing the final consummation by performance of any contract for the sale, lessing, or exchange of real estate; services rendered by an attorney at law, receiver, trustee in bankruptcy, administrator, or executor, or an person doing any of the acts specified in Section 2, Subdivision (a) of this Act under order of any court; a trustee acting under a trust agreement, deed of trust, or will, or the regular salaried employees thereof.

"(c). Any person, partnership, or corporation who has secured a license under Texas Securities' Act, House Bill No. 521, Regular Session, Forty-fourth Legislature."

We think it apparent from a reading of the Article above cited that it was passed for the purpose of regulating the real estate business in Texas to the end that the public should be protected against fraud. Section 3 of the Act sets out certain exemptions or exceptions and those falling within such provisions are completely relieved from regulation and licensing under this statute. Because of the limited nature of their dealings, the special capacity in which they act, or by reason of the adequate protection afforded the public under other statutes, the reason underlying these exemptions would seem clear.

Since those exempt are in no way subject to the provisions of the statute we think the licensing and regulatory authority of the Securities Division extends only to persons or companies falling within the statutory definitions of the terms "Real Estate Dealer" and "Real Estate Salesman." A "Real

Honorable Sidney Latham, page 4

Estate Salesman" is, according to Section 2(b), a person or company employed by a "licensed real estate dealer" and under Section 6(f) an application for a salesman's license must be accompanied by a "verified written statement by the dealer into whose service he is about to enter, certifying that in his opinion the applicant is honest, truthful, and of good reputation. . . ."

We conclude that the Securities Division of the office of the Secretary of State is not authorized to issue a Real Estate Salesman's license to any applicant who fails to show that he is to be employed by a licensed Real Estate Dealer. It would follow that the employee of one exempt under the Act and who holds no Real Estate Dealer's License, would not be a proper subject for a salesman's license.

It is sincerely hoped that this opinion will prove of some assistance to you in administering the Act.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By (Signed) HUGENE ALVIS
Assistant

EA:db

OK BW

APPROVED OCT. 10, 1944
(Signed) CARLOS ASHLEY
FIRST ASSISTANT ATTORNEY GENERAL

APPROVED OPINION COMMITTEE

By B.W.B., Chairman